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Committee on the Peaceful Uses of Outer Space
Legal Subcommittee
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Draft report

III. Information on the activities of international intergovernmental and non-governmental organizations relating to space law

1. Pursuant to General Assembly resolution 72/77, the Subcommittee considered agenda item 5, entitled "Information on the activities of international intergovernmental and non-governmental organizations relating to space law", as a regular item on its agenda.

2. The representative of Pakistan made a statement under agenda item 5. Statements were also made under the item by the observers for ECSL, the Ibero-American Institute of Aeronautic and Space Law and Commercial Aviation, IISL, ILA and Intersputnik. During the general exchange of views, statements relating to the item were made by observers of other international intergovernmental and non-governmental organizations.

3. For its consideration of the item, the Subcommittee had before it the following:

(a) Note by the Secretariat containing information on activities relating to space law received from the Ibero-American Institute of Aeronautic and Space Law and Commercial Aviation, ILA and Intersputnik (A/AC.105/C.2/113);

(b) Conference room paper containing information on activities relating to space law received from IISL (A/AC.105/C.2/2018/CRP.13).

4. The Subcommittee heard a presentation entitled "SGAC: views and activities of the Space Law and Policy Project Group", by the observer for SGAC.

5. The Subcommittee noted with satisfaction that the activities of international intergovernmental and non-governmental organizations relating to space law had continued to contribute significantly to the study, clarification and development of space law and that those organizations had continued to organize conferences and symposiums, prepare publications and reports and organize training seminars for practitioners and students to broaden and advance knowledge of space law.

6. The Subcommittee noted that international intergovernmental organizations had an important role to play in the development, strengthening and furtherance of understanding of international space law.

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7. The Subcommittee welcomed the information provided by the observer for APSCO, including information on the APSCO training course entitled "Space Law and Policy", held in Harbin, China, from 4 to 8 July 2017; the fourth APSCO Space Law and Policy Forum, also held in Harbin, China, from 10 to 12 July 2017; the tenth anniversary high-level forum celebrating 10 years since the establishment of APSCO, to be held in Beijing from 14 to 16 November 2018; and the APSCO ninth international symposium, also to be held in Beijing in November 2018.

8. The Subcommittee welcomed the information provided by the observer for ECSL, including information on the European rounds of the Manfred Lachs Moot Court, held in Helsinki from 10 to 12 May 2017; the twenty-sixth edition of the ECSL Summer Course on Space Law and Policy, held in Rome from 4 to 15 September 2017; and the ECSL Executive Course on Space Law and Regulations, tailor-made for industry professionals, to be held at the ESA European Space Research and Technology Centre in Noordwijk, the Netherlands, from 6 to 8 June 2018.

9. The Subcommittee welcomed the information provided by the observer for ESA, including information on ESA involvement in bodies such as the Inter-Agency Space Debris Coordination Committee and the Space Mission Planning Advisory Group; the contributions of ESA to the UNISPACE+50 process; and advice and assistance provided by ESA to its member States in the establishment and implementation of national space legislation.

10. The Subcommittee welcomed the information provided by the Ibero-American Institute of Aeronautic and Space Law and Commercial Aviation (see A/AC.105/C.2/113), including information on celebrations for its forty-fourth conference, held in Santiago from 25 to 28 September 2017; participation in "Science Week", held in Cadiz, Spain, in November 2017; and the fifth Seminar on Space Activities and Law, held at the Institute's headquarters in Madrid on 27 November 2017.

11. The Subcommittee welcomed the information provided by the observer for IISL (see A/AC.105/C.2/2018/CRP.13), including information on the sixtieth IISL Colloquium, held in Adelaide, Australia, from 25 to 29 September 2017; the twenty-seventh World Final Manfred Lachs Space Law Moot Court Competition, also held in Adelaide in September 2017, and the twenty-eighth session of the same competition, to be held in Bremen, Germany, in 2019; the twelfth Eilene M. Galloway Symposium on Critical Issues in Space Law, held in Washington, D.C., on 13 December 2017; and the new IISL website (http://iislweb.org).

12. The Subcommittee welcomed the information provided by ILA on its activities relating to space law (see A/AC.105/C.2/113), including information on the four central topics and two specific questions of the ILA Space Law Committee report; ILA participation in the Action Team on Exploration and Innovation; and the forthcoming seventy-eighth conference of ILA, to be held in Sydney, Australia, in August 2018.

13. The Subcommittee welcomed the information provided by Intersputnik (see A/AC.105/C.2/113), including information on its participation in the fifteenth Blischenko Congress, convened by the Peoples' Friendship University of Russia, held in Moscow on 22 April 2017; the special May 2017 issue of the Russian scientific and technical journal *Electrosvyaz* that was dedicated to international space law; a seminar on the development of national satellite telecommunications named NATSATTEL, held in June 2017; and a round-table discussion at the Institute of Legislation and Comparative Law devoted to the sixtieth anniversary of the launch of Sputnik, held in December 2017.

14. The Subcommittee welcomed the information provided by the observer for the National Space Society, including information on the publication of *Ad Astra*, a quarterly magazine chronicling important developments in space; and the annual International Space Development Conference, which is to be held in Los Angeles, United States, from 25 to 29 May 2018.

15. The Subcommittee welcomed the information provided by the observer for the Regional Centre for Remote Sensing of the North African States (CRTEAN), including information on work undertaken to develop a model regional law for space that could be used by States as guidance when creating their own domestic laws, and information on the second International Conference and Exhibition: Advanced Geospatial Science and Technology (TeanGEO 2018), to be held in Tunis from 26 to 28 September 2018.

16. The Subcommittee welcomed the information provided by the observer for SGAC, including information on the sixteenth Space Generation Congress, held in Adelaide, Australia, in September 2017; the third SGAC technology-focused event, SGx, held in Washington, D.C., on 12 March 2018; the third European Space Generation Workshop, held in Bucharest on 9 and 10 March 2018; and the seventh annual Space Generation Fusion Forum, held in conjunction with the thirty-fourth Space Symposium, in Colorado Springs, United States, from 16 to 19 April 2018.

17. The Subcommittee welcomed the information provided by the observer for SWF, including information on the fifth annual Advanced Maui Optical and Space Surveillance Dialogue, held in Maui, United States, in September 2017; a one-day event on space insurance aimed at fostering a discussion on the role and importance of the insurance industry in incentivizing responsible behaviour and best practices among satellite operators, held in Washington, D.C., in January 2018; and the ongoing work of SWF with the Hague Space Resources Governance Working Group.

18. The Subcommittee agreed that it was important to continue the exchange of information on recent developments in the area of space law between the Subcommittee and international intergovernmental and non-governmental organizations and that such organizations should once again be invited to report to the Subcommittee, at its fifty-eighth session, on their activities relating to space law.

XIII. General exchange of views on potential legal models for activities in the exploration, exploitation and utilization of space resources

19. Pursuant to General Assembly resolution 72/77, the Subcommittee considered agenda item 15, entitled "General exchange of views on potential legal models for activities in exploration, exploitation and utilization of space resources", as a single issue/item for discussion.

20. The representatives of Austria, Belgium, Brazil, Canada, France, Germany, Greece, Indonesia, Japan, Luxembourg, Mexico, the Netherlands, Pakistan, the Russian Federation, the United Arab Emirates and the United States made statements. Statements were also made by the representative of Nigeria on behalf of the Group of 77 and China and the representative of Argentina on behalf of the Group of Latin American and Caribbean States. During the general exchange of views, statements relating to the item were also made by representatives of other member States.

21. The Subcommittee had before it the following:

(a) Conference room paper containing a working paper prepared by Belgium on questions and observations on the establishment of national legal frameworks for the exploitation of space resources (A/AC.105/C.2/2018/CRP.8);

(b) Conference room paper containing information provided by the Netherlands, entitled "The Hague Space Resources Governance Working Group" (A/AC.105/C.2/2018/CRP.18).

22. The Subcommittee noted that the Hague Space Resources Governance Working Group, established to assess the need for a regulatory framework for space resource activities, had held four in-person meetings: two in 2016 and two in 2017. In that regard, the Subcommittee noted that the Working Group had identified 19 "building blocks", which were the topic areas that such a regulatory framework could include.

Those building blocks would be open for comment until July 2018, after which the Working Group would continue to operate for two years in order to enable inclusive consultations on the building blocks.

23. The view was expressed that the discussions on space resources in the Hague Space Resource Governance Working Group had been conducted in an open, inclusive and transparent manner, with the intention of producing a document containing building blocks that could contribute to the regulation of space resources for the consideration of States and the international community. The delegation expressing that view also expressed the view that, if States so decided, the work of the Group could be a starting point for negotiations on an international framework.

24. The view was expressed that, in the absence of a mandate from States for a formal mechanism to ensure their representation, initiatives that provided a forum for negotiations on an international framework should not be acknowledged. Despite being potentially valuable, such work would be undertaken in a manner that would create confusion and interfere with the work of the Committee.

25. Some delegations expressed the view that a clear understanding gained through a wide-ranging debate on international legal obligations under the United Nations treaties on outer space was necessary, in order to avoid gaps and ensure the consistency of national legislation on the utilization of space resources.

26. The view was expressed that, in accordance with the title of the agenda item, the Subcommittee should consider discussing the existing legal model for activities in the exploration, exploitation and utilization of space resources, namely the international legal regime applicable to States as laid out in the Outer Space Treaty and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, and that a common understanding of the provisions contained in those instruments would assist States in the development of their national legislation on the subject.

27. Some delegations expressed the view that the Outer Space Treaty guaranteed the freedom of exploration and use of outer space and, in that regard, did not prohibit the utilization and exploitation of resources contained in celestial bodies.

28. Some delegations expressed the view that taking a broad multilateral approach to space resources within the Committee and its Legal Subcommittee was the only way to ensure that the concerns of all States would be taken into account, thereby promoting peace and security among nations.

29. The view was expressed that space resources were accessible to only a very limited number of States and to a handful of enterprises within those States. In that connection, the delegation expressing that view was also of the view that it would be important to assess the impact of a "first-come, first-served" doctrine on the global economy, which could create a de facto monopoly in complete contradiction to the letter and the spirit of the United Nations treaties and resolutions.

30. Some delegations expressed the view that the conditions under which both public and private operators could conduct resource utilization activities needed to be studied and agreed multilaterally, in order to appropriately address relevant issues, including the regulation of access to resources, the co-existence of activities on the same celestial body, the prevention of multiple new potential risks to both the terrestrial and space environments and the modalities of supervision by States.

31. The view was expressed that even if non-renewable resources from a celestial body could be subjected to an ownership regime, the manner in which the principles enshrined in the Outer Space Treaty were to be adhered to would still need to be determined. Specific areas of concern included ensuring that: (a) space resource activities would be carried out for the benefit and interest of all countries on a non-discriminatory basis; (b) free access to all areas of the celestial body would be maintained; (c) space resource extraction would not amount to national appropriation

by any means; and (d) facilities and stations would remain open to representatives of other States on the basis of reciprocity.

32. The view was expressed that the Subcommittee should undertake detailed discussions on the exploitation and utilization of space resources by private entities, specifically addressing the following concerns: whether the legal status of a celestial body was the same as the legal status of the resources on it; whether the exploitation and utilization of space resources by a private entity could be for the benefit of all humankind; whether a claim of ownership of space resources by a private entity violated the principle of non-appropriation in the Outer Space Treaty; and how an international mechanism for the coordination and sharing of space resources could be built.

33. The view was expressed that a multilateral approach to addressing the issues arising from space resource activities was essential, in order to ensure that the principles of the Outer Space Treaty were respected and upheld.

34. Some delegations expressed the view that, in the light of the increasing participation of the private sector in space activities, an international legal framework that was developed in a multilateral forum and that clearly defined and guided commercial activities in outer space could play an important role in expanding the use of outer space and stimulating space activities, and that such a framework was essential as a means of providing legal certainty.

35. The view was expressed that, in the context of space resource utilization activities, only a few contributions of States to the discussion had to do with the need to establish an international regime to regulate such activities. The delegation expressing that view also expressed the view that the discussion on space resource exploitation at the international level had only succeeded in reducing key issues, concerning the legality and finality of those activities, to mere matters of interpretation of a small number of international legal provisions, and that, furthermore, focusing on such a nuanced interpretation had the apparent aim of resolving broad legal implications of one of the most dramatic evolutions in modern spacefaring, so as to be determined by the subsequent practice of only a handful of States.

36. The view was expressed that there was a lack of uniform understanding with regard to two principles: firstly, that the exploration and use of outer space was the province of all humankind, as set out in the Outer Space Treaty, and secondly, that the Moon and its natural resources were the common heritage of humankind, as set out in the Moon Agreement. The delegation that expressed that view was also of the view that those concepts required thorough discussion in the Legal Subcommittee in order to ensure their uniform interpretation.

37. The view was expressed that, while proclaiming the universal principles of free access to outer space, and freedom and equality in the study and exploration of outer space, the Outer Space Treaty contained no provisions guaranteeing freedom of action for States, thereby calling into question the stated basis of many national laws on space resource exploitation and utilization.

38. Some delegations expressed the view that the international community of States had jurisdiction over space resources, as well as the right and duty to develop an appropriate international legal framework for such activities. Owing to its unique expertise, as well as its forum for discussions, the Legal Subcommittee was the natural and logical place to engage in the progressive development of international space law with due regard to the interests and opinions of all countries.

39. The view was expressed that the work undertaken in the Hague Space Resources Governance Working Group was troubling for a number of reasons, including the following: fundamental principles of interest to all States had been discussed by a limited group of individuals; the Group had made assumptions about the interpretation of international space treaties; and the output of the Group, namely its study, contained language that was strikingly similar to recent provisions of national

laws on space resources, while at the same time lacking the practical considerations contained in the work of the Scientific and Technical Subcommittee (e.g., references to the long-term sustainability of outer space activities).

40. The view was expressed that the development of a regulatory regime on the exploitation of space resources was a right of the international community as a whole, and that, in that context, it was necessary for the international community to define the legal framework and arrive at terms and conditions of commercial extraction on the basis of international consensus in order to ensure the validity and application of international law to such activity, thereby creating the legal certainty essential for stimulating private investment and research into innovative space activities.

41. Some delegations expressed the view that the freedom of exploration, use and exploitation of outer space was not absolute, but instead was fundamentally restricted by the principles contained in the Outer Space Treaty, in particular as related to non-discrimination of any kind, equality between States and observance of international law.

42. Some delegations expressed the view that any national legislation on space resources should proclaim, as its guiding principle, that the use and exploration of outer space and the utilization of space resources were of paramount interest to humanity, and that space resource activities should be carried out in a sustainable manner and exclusively for the benefit of all countries, regardless of their levels of economic and scientific development. The delegations expressing that view also expressed the view that clauses in existing national legislation that contained general terms of conformity with the international obligations of the State in question were not sufficient to guarantee compliance with the stated treaty principles.

43. Some delegations expressed the view that the Committee on the Peaceful Uses of Outer Space should analyse the text of the United Nations treaties on outer space to reach a common understanding of the guiding principles. On the basis of that analysis, it should develop model legislative clauses that could be inserted into national legislation and that reproduced, in a precise and explicit manner, the principles mentioned in the international treaties, and it should establish an effective institutional mechanism to control the enforcement of those model terms.

44. Some delegations expressed the view that the discussions in the Hague Space Resources Governance Working Group were welcome in that the topics and issues under consideration, such as the 19 building blocks, could form a useful starting point to undertaking discussions in the Legal Subcommittee.

45. The view was expressed that because all countries would stand to benefit from the progress made in space resource utilization, the primary interest of ensuring humanity as a whole would benefit would also be achieved; however, in order to do that, care should be taken to provide the proper legal framework in order to allow actors to develop their projects on a solid foundation.

46. The view was expressed that the regulation of private sector actors in outer space was consistent with international obligations under the Outer Space Treaty and with half a century of practice under the Treaty, and the consistently stated positions of some States.

47. The view was expressed that utilization of space resources was a lawful activity under the Outer Space Treaty, and that evidence of that lawfulness was demonstrated by the Moon Agreement itself. The delegation expressing that view also expressed the view that because the Moon Agreement contained the same prohibition against national appropriation that was found in the Outer Space Treaty, and also contained a discussion of how resources should be regulated, it demonstrated that the negotiators and drafters of the Moon Agreement believed the utilization of space resources was permitted by the Outer Space Treaty and was specifically consistent with the non-appropriation doctrine.

48. The view was expressed that, in order to facilitate discussion on space resource utilization activities, the term "exploitation activities" could be defined as any activity in outer space, including on celestial bodies, with the purpose of extracting mineral resources from those bodies in order to transfer them, before or after processing transformations, to Earth, with the intent to use them for governmental or commercial activities.

49. The view was expressed that definitions regarding space resource utilization activities that specified the governmental or non-governmental nature of actors undertaking such activities, and the consequent purposes for which the resources would be used, including whether the resources were to be used in situ or transported to Earth, were not applicable to the determination of the lawfulness of that space resource activity because such distinctions were not found in the Outer Space Treaty.

50. Some delegations expressed the view that questions under the present agenda item, relating to space resources, could be included in the set of questions before the Working Group on the Status and Application of the Five United Nations Treaties on Outer Space (see A/AC.105/1122, annex I, appendix I).

51. Some delegations expressed the view that an ad hoc working group should be established with the mandate to develop and propose to the Legal Subcommittee alternative legal solutions capable of providing the legal certainty necessary for acts of exploration, exploitation and utilization of outer space resources.